

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of Marine Services Express, Inc., a California Corporation, for a Certificate of Public Convenience and Necessity to Establish and Operate Scheduled Vessel Common Carrier Service between Designated Points and Places in the greater San Francisco Bay Area pursuant to and under contract(s) with Governmental or Private Entities on an Emergency, Interim or Continuous Basis

Application 99-01-003

**ADMINISTRATIVE LAW JUDGE'S RULING  
AND PREHEARING CONFERENCE MEMORANDUM**

A prehearing conference (PHC) was held in Sacramento on January 8, 2002, at 10:00 a.m. Marine Services Express, Inc. (Marine Services), the applicant, and Blue & Gold Fleet, L.P. (Blue & Gold), the protestant, attended through their respective counsel. No reporter was present, so this memorandum and ruling will serve as the official record of the PHC.

As explained in the PHC Notice, the purpose of the PHC was to clarify a proposal before the Commission that would settle and otherwise resolve issues arising from Marine Services' application in its current amended form. Marine Services and Blue & Gold jointly filed the proposal in response to Decision (D.) 01-05-020 (May 3, 2001), in which the Commission declined to adopt a previous settlement proposal and allowed them to renegotiate their agreement and resubmit it for consideration within 60 days, or alternatively for Marine

Services to resubmit its application by that deadline. The parties submitted the pending proposal in response to D.01-05-020.<sup>1</sup>

Conceptually, the proposal would grant Marine Services “blanket” authority to operate a number of publicly or privately sponsored vessel common carrier services on San Francisco Bay, subject only to a registration requirement for each service as and when Marine Services enters into (or competes for) the pertinent service contract. This proposal is a response to adverse experiences of Marine Services and other vessel carriers that sought Commission authority in the past to operate such sponsored services, demonstrating a need for greater flexibility in our licensing process. A carrier generally must have valid operating authority to satisfy bidding or contracting requirements, and our current procedure is too cumbersome to satisfy this need within the deadlines imposed by the sponsors. Public policy increasingly favors the institution of new ferry services on San Francisco Bay, and Marine Services aspires to be prepared for an anticipated flood of new opportunities to operate these services by establishing this streamlined licensing procedure.

The specific terms and conditions proposed by Marine Services are as follows:<sup>2</sup>

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<sup>1</sup> The title of the parties’ filing, “Renewed Joint Motion for Adoption of Mutual Proposal for Amended Settlement; Proposal Attached,” suggests that a form of settlement agreement was included, as is customary with motions made under Rule 51. This was not the case, however. The motion was not accompanied by an executed settlement agreement, and the parties explained at the PHC that the Commission should regard the motion as a device for setting forth suggested terms and conditions they would consider to be an acceptable outcome for this proceeding.

1. Marine Services will have non-exclusive “blanket” authority to establish and operate as many as five scheduled vessel common carrier services on San Francisco Bay.
2. Marine Services’ authority to establish and operate these services will be effective for a period of two years from the effective date of the Commission’s order, but may be renewed or extended as provided below.
3. The establishment of each separate and particularly described service will be subject to the requirement that the service be registered in the manner prescribed below.
4. Each particular service to be established under this blanket authority must be publicly or privately sponsored, rather than instituted on Marine Services’ own initiative. This means that when the service is in operation Marine Services must be in contractual privity with the sponsoring public agency or party so that the cost of operation is underwritten by the sponsor at least in part, irrespective of the fact that passengers must pay individual fares for passage.
5. Any such service must not compete with any vessel common carrier service serving the same points on the same routes at the time it commences.
6. The blanket authority will expire two years after it becomes effective, unless the Commission extends it upon application filed by Marine Services not less than 180 days before the expiration date and supported by a showing of the efforts Marine Services made to exercise that authority after it became effective,

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<sup>2</sup> Blue & Gold’s promise to withdraw its protest is predicated upon Marine Services’ agreement not to protest a request by Blue & Gold for substantially identical regulatory relief.

and of Marine Services' continued operational and financial fitness.

7. If Marine Services exercised the blanket authority within the effective period, the Commission will renew that authority if, not less than 90 days before the expiration date, Marine Services serves notice of its intent to extend the authority. The notice must describe the extent to which the authority was exercised during the effective period, and include a showing that Marine Services remains operationally and financially fit to operate current and prospective services.
8. The Commission may increase the maximum number of services that may be operated under Marine Services' blanket authority upon application supported by a showing of the prospective need for the increased authority. Any such application must be filed sufficiently in advance of the anticipated exercise of the increased authority to enable the Commission to consider it under its usual procedure for deciding applications.
9. Any application filed under paragraphs 6 and 8 will be subject to the filing of protests under the Commission's usual procedure for deciding applications.
10. To register a particular service under paragraph 3, Marine Services must file a notice of intent to start the service not less than 60 days before its anticipated commencement. The notice must include the following information:
  - a. A description of the points and route to be served.
  - b. Whether the service will be established on an entirely new route, or whether it is an existing service for which Marine Services expects (or is competing) to assume responsibility.
  - c. A summary of the contractual terms and conditions under which it would operate the service, and a description of the methodology to be followed for entering into the contractual arrangement.
  - d. A summary of Marine Services' financial ability to operate the particular service involved.

- e. A summary of Marine Services' operational fitness to operate the service, including a discussion of the availability of the necessary vessel(s) and a description thereof.
  - f. Identification of the agency or agencies other than the Commission which have conducted, or will conduct, environmental review of any aspect of establishment of the service under the California Environmental Quality Act (CEQA), and the nature, scope, and status of such review. If any such review is being conducted at the time its notice is filed Maritime Services will furnish pertinent documentation as part of its notice, and will include documentation of any final determination where such review has been concluded. If no other agency has conducted, or will conduct, such review, the registration notice must include information sufficient to enable the Commission to perform environmental review as the responsible agency under CEQA.
11. Registration of a particular service will not be deemed complete until the Executive Director issues a confirmation letter stating that all registration requirements have been satisfied.
12. A registered service may not commence operation until Marine Services has complied with General Orders 87, 111, and 117 with respect to that service and Marine Services has remitted the Transportation Reimbursement Fee required by Pub. Util. Code § 403, and until the Commission's Rail Safety and Carriers Division mails a notice to Marine Services that its evidence of insurance and other documentation required hereunder have been filed with the Commission, and the U.S. Coast Guard has approved the use of the vessels involved.
13. The notice of registration of a particular service is not subject to protest, except that the operator of an existing vessel common carrier service may file a timely protest to a registration notice if the service to be registered would directly interfere with that existing service. If such a protest is filed, the registration notice will be treated as a formal application.

14. Termination of any registered service will be governed by the terms of the applicable contract, and will not require Commission authorization. Marine Services will notify the Commission immediately in the event of termination of registered service.
15. The rates and charges for any registered service may be established and adjusted under the terms of Marine Services' contract with the sponsor if the contract so provides, in which event the rates will be considered to be justified under Pub. Util. Code § 454 in recognition of the contractual commitment of the sponsor to underwrite some or all of the cost of operating the service.

Marine Services asked that its amended application be deemed revised to conform to this proposal, and Blue & Gold has agreed to withdraw its protest if the Commission substitutes revisions in this proposal for inconsistent features of the previous one. Their request is granted. The motion will be treated a request for an order embodying the amended proposal. Because Blue & Gold is the only protestant, this will be treated as an ex parte proceeding when Blue & Gold withdraws its protest.

**IT IS THEREFORE RULED** that:

1. The parties may jointly file proposed corrections to this memorandum within ten (10) days hereof, and shall separately serve a copy on me.
2. The application shall be deemed revised in accordance with the foregoing memorandum, unless I issue a ruling to the contrary by April 15, 2002.
3. Blue & Gold Fleet, L.P. shall withdraw its protest by no later than April 22, 2002, unless by that date it shows good cause why it should not do so.

Dated March 22, 2002, at San Francisco, California.

/s/ VICTOR RYERSON

Victor Ryerson  
Administrative Law Judge

**CERTIFICATE OF SERVICE**

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling and Prehearing Conference Memorandum on all parties of record in this proceeding or their attorneys of record.

Dated March 22, 2002, at San Francisco, California.

/s/ ERLINDA PULMANO  
Erlinda Pulmano

**N O T I C E**

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